IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1025 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT
Versus
NATVARLAL CHUNILAL THAKKAR & ANOTHER

==========

Appearance :
MS HANSA PUNANI, ADDL. PUBLIC PROSECUTOR for Appellant.
MR YM THAKKAR for Respondent No. 1
MR KR RAVAL for respondent No.2.

==========

CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 25/10/2007

ORAL JUDGMENT

1. By filing the present appeal under section 378 of the Code of Criminal procedure, the State of Gujarat has challenged the judgment and order dated 07.12.96 passed by the learned Judicial Magistrate, First Class, Deesa in Criminal Case No. 4 of 1992 on 07.12.1996 acquitting the accused, respondent No.1, for the offences punishable under section 7 and 16 of the Prevention of Food Adulteration Act.

2. On the basis of the complaint, Exh.1, respondent No.1 came to be charged for the offences punishable under section 7 and 16 of the Prevention of Food Adulteration Act [hereinafter referred to as the Act]. At the trial, the prosecution has examined the Food Inspector, Babulal Nanuram Trivedi, PW.1, Exh.11 and produced documentary evidence in support of the deposition adduced by the said Babulal N. Trivedi. The learned trial Judge, after going through the evidence on record of the case, held that the prosecution has miserably failed to prove the adulteration in the black pepper [kalamari]. The learned Judge further held that even the basic ingredients of sections 7 and 16 of the Act were not proved by the prosecution to convict the respondent No.1, and, therefore, the learned trial Judge acquitted the respondent No.1 for the offences punishable under section 7 and 16 of the Act.

3. Aggrieved by the order of acquittal passed by the learned trial Judge, the State has preferred the present appeal.

4. Ms. Hansa Punani, learned Additional Public Prosecutor representing the State vehemently submitted

that the learned trial Judge has not taken into account the evidence on record in its proper perspective in acquitting the respondent No.1. She further submitted that the prosecution ha established the guilt of the respondent No.1 but that fact was overlooked by the learned trial Judge in acquitting him. She further submitted that in view of the analysis report on record, the order of acquittal passed by the learned trial Judge requires to be set aside and the respondent No.1 be convicted for the offences punishable under section 7 and 16 of the Act.

5. Mr. Y.M. Thakkar, learned advocate appearing for the original accused, respondent No.1 herein, submitted that the prosecution has miserably failed in proving the guilt of the accused and the learned trial Judge has rightly acquitted the accused. He further submitted that the accused is small trader. He further submitted that the sample was collected from the shop of the accused on 27.08.91; the sample was analyzed by the Public Analyst on 03.09.91; criminal case was filed in 1992, and the accused has suffered mental agony of the hanging sword of prosecution for about 15 years now; the learned trial Judge has rightly acquitted the accused in the absence of any convincing and cogent evidence and the same requires no interference at this belated stage.

6. Mr. K.R. Raval, learned advocate appearing for the Food Inspector, respondent No.2, supported the arguments advanced by learned Additional Public Prosecutor and submitted that in the facts and circumstances of the case, respondent No.1 is required to be convicted for the offences punishable under section 7

and 16 of the Act.

7. Having heard the learned advocates appearing for the respective parties and taking into consideration the evidence adduced by the prosecution and on re-appreciation of the same, I am of the view that the prosecution has not established the involvement of the respondent No.1 in the commission of offence under sections 7 and 16 of the Act. Even the deposition adduced by Babulal Nanuram Trivedi, PW.1, Exh.11 does not indicate involvement of the respondent No.1 in the commission of the offence. Thus on re-appreciation of the evidence on record of the case, in my view, the prosecution has not established the guilt of the respondent in the commission of the offence and as there are many infirmities in the evidence adduced by the prosecution, I do not consider it fit to interfere in the order of acquittal passed by the learned trial Judge.

8. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Judge who had the opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Judge, the Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for

acquittal given by the learned Judge and this Court is of the opinion that expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Others Vs. Bijendra Narain Chaudhari, AIR 1967 SC 1124, and (2) State of Karnataka Vs. Hema Reddy and Another, AIR 1981 SC 1417.

9. For the foregoing reasons, the appeal fails and is dismissed.

mathew [H.B.ANTANI, J.]